United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

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77-6204

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To be argued by
PROSPER K. PARKERTON

P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-6204

JOHN V. COLLINS,
Plaintiff-Appellant,

—*against*—

UNITED STATES OF AMERICA,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
FEB 10 1978
SECOND CIRCUIT

BRIEF FOR DEFENDANT-APPELLEE

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-6204

JOHN V. COLLINS,

Plaintiff-Appellant,

—against—

UNITED STATES OF AMERICA,

Defendant-Appellee.

BRIEF FOR DEFENDANT-APPELLEE

Preliminary Statement

This is an appeal by John V. Collins from an order and judgment of the United States District Court for the Eastern District of New York (Pratt, *J*), entered October 19, 1977, in this *pro se* action seeking to have the Federal Reserve Act, *as amended*, 12 U.S.C. § 221, *et seq.* [hereinafter "the Act"] declared unconstitutional. The order of the District Court granted the defendant's motion to dismiss the complaint for lack of subject matter jurisdiction in the absence of a justiciable case or controversy and for failure to state a claim upon which relief can be granted.

Statement of the Case

In his *pro se* complaint (3-4) [1] plaintiff alleged that the Federal Reserve Act unlawfully granted to private

[1] Unless otherwise designated, numbers in parentheses refer to pages in the supplemental appendix. To refer to pages in plaintiff's appendix, the designation "D, p." will be used.

parties the ownership of [money coined by the Federal Reserve System to discharge Congress' function of coining money] and that, as a consequence, the United States, "to secure the use of its own property, has had to issue bonds to the extent of nearly 700 billion dollars and pay interest thereon" (3-4). Plaintiff apparently contends that the Act is in violation of the United States Constitution, art. I, § 8, cl. 5, which grants to Congress the power "[t]o coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures; . . . ." In his "responses and objections to defendant's motion for dismissal," plaintiff elaborated on his claim (D5, pl-6):

> . . . Congress, in enacting the Federal Reserve Act, granted to private parties (commercial banks) a power that had been reserved exclusively to Congress by the Constitution; namely, the power to coin (create) money.

Plaintiff further stated (D5, p2):

> Inasmuch as commercial banks are the instant owners of money created under the Federal Reserve Act's system of creating (coining) money by bookkeeping entry it must inescapably follow that the commercial banks are the creators of our money.
>
> Inasmuch as the Constitution states, Art. I, Sec. 8, Cl. 5, that the power to coin (create) money is the exclusive power of Congress, hence the Federal Reserve Act which makes commercial banks the creators of money is unconstitutional and should be so declared as the plaintiff requests.

Plaintiff also claimed in his responses and objections that he had standing and was injured by the effect of the Act (1) as a taxpayer because tax funds are used to pay interest on this newly created money which Congress must rent and (2) as a consumer because the resulting inflation reduces his purchasing power (D5, p3-5).

The District Court dismissed the complaint, concluding (1) that it lacked subject matter jurisdiction over the action because plaintiff had not presented a case or controversy and (2) that plaintiff had failed to state a claim upon which relief could be granted. Plaintiff challenges these conclusions in this appeal.

ARGUMENT

Introduction—Statutory Framework

Congress created the Federal Reserve System in 1913 under the Federal Reserve Act pursuant to its power to "coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures" as granted by the Constitution, art. I, § 8, cl. 5. The Act established the Federal Reserve System as an agency or instrumentality of the Federal Government so that currency and monetary policy could be regulated. The Federal Reserve System is a central banking system comprised of (a) a seven-member Board of Governors, each member appointed by the President and confirmed by the Senate; and (b) twelve regional Federal Reserve Banks. Privately-owned commercial banks that are national banks are required to be members of the System; privately-owned state-chartered banks may become members of the System.

The commercial banks which are members of the System own stock with voting rights in the Reserve Bank in their region. 12 U.S.C. § 287. Six of the nine members of the board of directors of each Federal Reserve Bank are elected by member banks; the Board of Governors chooses the three remaining directors of each bank and designates the chairman. 12 U.S.C. § 302. The Board of Governors exercises general supervision over the Federal Reserve Banks. 12 U.S.C. § 248.

Federal Reserve notes, which form the bulk of the nation's currency, are issued by the Board of Governors

to the Reserve Banks in the discretion of the Board. The Federal Reserve notes are obligations of the United States and are issued against the security of United States securities, gold certificates, Special Drawing Rights Certificates, and commercial and agricultural paper purchased by the Reserve Banks. 12 U.S.C. § 411 *et seq.*

POINT I

The district court correctly held that it lacked jurisdiction over the subject matter of this action because it did not present a case or controversy.

The mere challenge to the constitutionality of a Congressional Act is not, in and of itself, sufficient to confer jurisdiction on a Federal District Court without the presence of a justiciable case or controversy. U.S. CONST. art. III, § 2, cl. 1; *Spector Motor Service, Inc.* v. *McLaughlin*, 323 U.S. 101 (1944); *United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947); *Flast* v. *Cohen*, 392 U.S. 83 (1968); *Goosby* v. *Osser*, 409 U.S. 512 (1973). Courts may only entertain matters which fall within the "case or controversy" limitation of judicial power. *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803). The bare assertion of an Act's unconstitutionality does not provide the requisite "case or controversy" to a court. *Muskrat* v. *United States*, 219 U.S. 346 (1911).

In order to have standing and to establish the jurisdictional prerequisite of a "case or controversy," the plaintiff must show that he has been perceptibly harmed by the challenged action or law. *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976); *Warth* v. *Seldin*, 422 U.S. 490 (1975); *Association of Data Processing Service Organizations* v. *Camp*, 397 U.S. 150 (1970). Absent a showing of personal injury, where justiciability may exist, the Court's exercise of power

would be gratuitous. *Simon* v. *Eastern Kentucky Welfare Organization, supra.*

Even accepting plaintiff's claim that he is injured as a taxpayer because tax funds are used to pay interest on money created by commercial banks which Congress must rent, he still does not have standing since he has failed to make the showing required by *Flast* v. *Cohen* (*supra*, 392 U.S. at 102-103) that:

> . . . the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the Congressional taxing and spending power and not simply beyond the powers delegated to Congress by Art. I, § 8.

Plaintiff's additional claim that the effect of the Act injured him as a consumer because the resulting inflation has reduced his purchasing power is, likewise, insufficient to confer standing. If an injury asserted by a plaintiff is not a concrete injury specific to him, but is one of a generalized nature affecting all taxpayers, it is not adequate to warrant standing. *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 209, 220-221 (1974). *Atkins* v. *United States*, 556 F.2d 1028 (Ct. Cl. 1977), *cert. denied*, 46 U.S.L.W. 3431 (January 9, 1978), cited by plaintiff, does not support his assertion that reduction in purchasing power as a result of inflation may provide standing. In that case and two other consolidated cases, 140 federal judges sued the United States in the Court of Claims under the Tucker Act, 28 U.S.C. § 1491, to recover additional compensation which they alleged was due to them under the compensation clause, U.S. CONST. art. 3, § 1, by virtue of the fact that Congress had not increased the nominal salary of judges during a period of inflation. The judges sued to recover a specific sum of money for what was alleged to be a concrete injury to them specifically as federal judges. The question of

standing was never an issue in the case and the judges' complaint was dismissed on other grounds.

The constitutionality of the scheme embodied in the Federal Reserve System has been challenged in the past and these attacks have been uniformly dismissed where no specific and particularized injury has been asserted by the plaintiff. In *Horne* v. *Federal Reserve Bank of Minneapolis*, 344 F.2d 725 (8th Cir. 1965), the plaintiffs, as citizens and taxpayers, made substantially the same allegations advanced by plaintiff here. The Court held that these plaintiffs were without standing as they had failed to demonstrate the requisite direct injury. *See Koll* v. *Wayzata State Bank*, 397 F.2d 124 (8th Cir.1968); *Bryan* v. *Federal Open Market Committee*, 235 F. Supp. 877 (D. Mont. 1964).

Plaintiff's request that the District Court declare the Federal Reserve Act of 1913 unconstitutional was an attempt to obtain an advisory opinion where no "injury in fact" was alleged by plaintiff. That a court should refrain from rendering such an opinion is well established and is the corollary of the case or controversy limitation set forth in the Constitution, art. III, § 2, cl. 1. *Golden* v. *Zwickler*, 394 U.S. 103 (1969); *Flast* v. *Cohen*, *supra*; *Muskrat* v. *United States*, *supra*.

Since plaintiff did not make the requisite showing of standing, the District Court was correct in holding that there was no justiciable case or controversy before the court and, consequently, that it lacked jurisdiction over the subject matter of the action.

POINT II

In any event, the district court correctly held that plaintiff failed to state a claim upon which relief could be granted.

In order fairly to consider whether plaintiff's *pro se* complaint, as expanded upon by his responses and objections, fails to state a claim, we have attempted to determine whether he may have a claim which he has not clearly articulated in his pleadings.

The claim which plaintiff appears to be asserting is that the Constitutional delegation to Congress of the power to "coin money" prohibits Congress from allowing member banks of the Federal Reserve System to establish demand deposit accounts under the Federal Reserve Act and, thereby, to create "money" in the economic sense. In alleging that the Federal Reserve Act has unconstitutionally given commercial banks the power to create (coin) money and has unconstitutionally given those banks that money, plaintiff appears to confuse the power to create money in the economic sense and the power to create money in the manufacturing sense, *i.e.*, the power to stamp metal into coins and the power to print Federal Reserve Notes. The creation of money in the economic sense is inherent in the concept of banking and credit. One form in which "money" is created is by a demand deposit account. In such an account a bank applies a certain sum to the account of a borrower, although not all of the sum will necessarily be withdrawn by the borrower at any given time. In its bookkeeping the bank then credits the entire sum as a liability and debits the payments to be received on the loan as an asset, with the interest to be accrued to be debited subsequently. At the instant of the creation of the demand deposit account the bank has an additional asset, and an additional liability. Similiarly, upon a withdrawal the borrower has an

additional asset, and an additional liability. While this process creates "money" in the economic sense as does virtually every form of credit, it does not increase either the bank's or the bororwer's net assets; and it does not increase the number of coins or notes in circulation.

In the exercise of its Constitutional authority to regulate the value of money Congress has put a rein on the inherent power of banks to create "money" by establishing demand deposits. By § 19 of the Federal Reserve Act, *as amended*, 12 U.S.C. § 461 *et seq.*, the Federal Reserve Board is authorized to require member banks to maintain reserves against its deposits in such ratios as the Board shall determine. Although Congress has exercised its authority to regulate the value of money, at least in part, by the Federal Reserve Act, neither by that Act nor by any other has Congress purported to give any private party the authority to manufacture money (to stamp metal into coins and to print Federal Reserve Notes) to be used as the personal property of that private party. Correspondingly, by giving to Congress the power to coin money the Constitution did not intend to preempt private banking practices nor to make Congress the sole entity in our economic system which could engage in establishing demand deposits or extending any other form of credit.

The power to allow member banks of the Federal Reserve System to establish demand deposit accounts and to regulate the reserves which shall be held against those deposits is certainly within the power of Congress as provided by the Constitution, art. I, § 8 cl.5. Chief Justice Hughes addressed the extent of this power in *Norman* v. *Baltimore & Ohio R.R.*, 294 U.S. 240, 303 (1935):

> . . . The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to

> lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several states, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power "to make all laws which shall be necessary and proper for carrying into execution" the other enumerated powers. [citation omitted]

The plenary authority of Congress over the currency and monetary policy has been repeatedly vindicated by the Supreme Court. Congress may charter banks and endow them with the right to issue circulating notes. *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1818). Notes circulated but which are not issued pursuant to Congress' authority may be taxed out of existence. *Veazie Bank* v. *Fenno*, 75 U.S. (8 Wall.), 533, 549 (1869). Municipal corporations may have their circulating notes restrained. *Merchants National Bank* v. *United States*, 101 U.S. 1 (1880). Congress has the power to require that United States notes be accepted as legal tender. *Knox* v. *Lee*, 79 U.S. (12 Wall.), 457 (1872); *Julliard* v. *Greenman*, 110 U.S. 421 (1884).

The argument which appears to underlie plaintiff's complaint is that the Constitutional delegation to Congress of the power "to coin money" prohibits Congress from allowing member banks of the Federal Reserve System to establish demand deposit accounts under the Federal Reserve Act and, in its broader ramifications, requires Congress to prohibit any private party from engaging in a credit transaction which creates "money" in the economic sense. This claim is patently without merit. Accordingly, the District Court was correct in holding that the complaint failed to state a claim upon which relief could be granted.

CONCLUSION

The order of the District Court should be affirmed in all respects.

Respectfully submitted,

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AFFIDAVIT OF MAILING

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COUNTY OF KINGS } ss
EASTERN DISTRICT OF NEW YORK

Dolores Byrd being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 9th day of February 19 78 he served a copy of the within

Brief for the Appellee & Supplemental Appendix

by placing the same in a properly postpaid franked envelope addressed to:

John Collins

1042 Carll Drive

Bay Shore, New York 11706

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, 225 Cadman Plaza East, Borough of Brooklyn, County of Kings, City of New York.

Dolores M Byrd

Sworn to before me this

9th day of February 19 78

Barbara Allen

BARBARA A. ALLEN
Notary Public, State of New York
No. 24-4646824
Qualified in Kings County
Commission Expires March 30, 1979